IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1135 OF 1992

Union of India ..Appellants

versus

M/s. Daguji Bhaurao ..Respondents

Mr. A. N. Samant for the Appellants.

Mr. G. J. Mohanrao for the Respondents.

CORAM: D.G.DESHPANDE,J.

DATED: 4TH MAY, 2005

ORAL ORDER :

1. Heard learned counsel for the parties.

2. This Appeal is filed by the Union of India - Appellants against the order of the RACT, Mumbai dated 27.7.1992.

3. Mr. Samant raised only two contentions. Firstly, according to him the RH issued by the Railway was "said to contain". The second contention was that the the claim was filed by the original claimants against two Railways i.e. Central Railway and Southern

Railways.

4. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

5. A consignment of onions booked on 2.5.1974 and delivered on 17.5.1974 with a delay of 7 days. The onions booked were of best quality, big, red and in sound condition. On arrival of the consignment at destination they were found in damaged condition. The damage is caused due to the negligence of the railways. At the time of delivery, the damage was assessed. Contents of damage certificate were not correct and are not admitted. According to the claimants the onions booked were of best quality, big, red and in sound condition. The loss, damage, deterioration, shortage and non delivery are due to negligence and misconduct of the Appellants and their servants. Inspite of repeated requests the railways have not disclosed full particulars of transit of the suit consignment and as the claim was not settled suit / Application came to be filed before the RACT Mumbai. The Tribunal framed as many as 16 issues but the issue regarding RR "said to contain" was not

at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

6. As regards liability of both the railways, if at all there is liability of the Union of India, then Decree against one of the railways would be proper and sufficient. In many such appeals of the Union of India, I have accepted this contention, therefore, impugned judgment will have to be maintained against General Manager, Central Railway only and order against Southern Railways will have to be set aside.

7. In the result, I pass the following order:

ORDER

. The appeal is partly allowed.

. There shall be liability of General Manager, Central Railway only and not of Southern Railways.

. No order as to costs.

4.5.2005 (D.G. DESHPANDE,J.)